UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:18-cr-48-KDB-SCR-13

UNITED STATES OF AMERICA,)	
)	
)	
VS.)	ORDER OF INSTRUCTIONS
)	
MARTIN VIDAL SANTILLAN,)	
)	
DEFENDANT.)	
	_)	

THIS MATTER is before the Court *sua sponte*.

The Defendant filed a *pro se* "Motion for Leave to File a Writ of Habeas Corpus Under § 2255" in this case. [Doc. 442]. On August 8, 2023, the Court entered an Order informing the Defendant that it intends to recharacterize this filing as a Motion to Vacate pursuant to 28 U.S.C. § 2255 pursuant to <u>United States v. Castro</u>, 540 U.S. 375 (2003). [Doc. 444]. The Court afforded the Defendant the opportunity to withdraw his "Motion for Leave to File…" within 30 days and cautioned him that, "[i]f the Defendant does not timely file a Notice withdrawing his 'Motion for Leave to File…,' it will be recharacterized as a § 2255 Motion to Vacate." [Id. at 4].

The Defendant has failed to file a Notice withdrawing his filing and the time to do so has expired. The "Motion for Leave to File..." is, therefore, recharacterized as a § 2255 Motion to Vacate. The Clerk of Court is hereby directed to open the "Motion for Leave to File..." as a "Motion to Vacate" pursuant to § 2255 in a new civil case, and to docket the August 8 Order as a "Castro Order" in that case.

IT IS, THEREFORE, ORDERED that:

- 1. Defendant's *pro se* "Motion for Leave to File a Writ of Habeas Corpus Under § 2255" [Doc. 442] is recharacterized as a § 2255 Motion to Vacate.
- 2. The Clerk of Court is instructed to open a new civil § 2255 case in which Docket Entry 442 shall be docketed as a "Motion to Vacate," and Docket Entry 444 shall be docketed as a "Castro Order."

Signed: September 18, 2023

Kenneth D. Bell

United States District Judge